

Amy Lynn Bennecoff Ginsburg (275805)  
Kimmel & Silverman, P.C.  
30 East Butler Pike  
Ambler, PA 19002  
Telephone: 215-540-8888  
Facsimile: 215-540-8817  
aginsburg@creditlaw.com  
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

<b>GEORGE PADILLA,</b>	) <b>Case No.: '16CV2092 AJB WVG</b>
<b>Plaintiff.</b>	)
<b>v.</b>	) <b>COMPLAINT FOR DAMAGES</b>
<b>CONVERGENT OUTSOURCING,</b>	) <b>1. VIOLATION OF THE FAIR</b>
<b>INC.,</b>	) <b>DEBT COLLECTION PRACTICES</b>
<b>Defendant.</b>	) <b>ACT, 15 U.S.C. §1692 ET. SEQ.;</b>
	) <b>2. VIOLATION OF THE</b>
	) <b>TELEPHONE CONSUMER</b>
	) <b>PROTECTION ACT, 47 U.S.C. §227</b>
	) <b>ET. SEQ.;</b>
	) <b>3. VIOLATION OF THE</b>
	) <b>ROSENTHAL FAIR DEBT</b>
	) <b>COLLECTION PRACTICES ACT,</b>
	) <b>CAL. CIV. CODE §1788 ET. SEQ.</b>
	)
	) <b>JURY TRIAL DEMANDED</b>

**COMPLAINT**

GEORGE PADILLA ("Plaintiff"), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against CONVERGENT OUTSOURCING INC. ("Defendant"):

## INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et. seq.* ("RFDCPA"), which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

## JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Supplemental jurisdiction over all state law claims is proper pursuant to 28 U.S.C. § 1367 *et seq.*

4. Defendant conducts business in the State of California and as such, personal jurisdiction is established.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

## PARTIES

6. Plaintiff is a natural person residing in San Diego, California 92154.

1           7.     Plaintiff is a “consumer” as that term is defined by 15 U.S.C.  
2 §1692a(3).

3           8.     Defendant is a national debt collection company with its corporate  
4 headquarters located at 800 SW 39<sup>th</sup> Street, Renton, WA 98057.

5           9.     At all times material hereto, Defendant acted as a “debt collector[s]”  
6 within the meaning of 15 U.S.C. § 1692(a)(6), and attempted to collect a “debt” as  
7 defined by 15 U.S.C. § 1692(a)(5).  
8

9           10.    Defendant acted through its agents, employees, officers, members,  
10 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
11 representatives, and insurers.  
12

13  
14  
15                   **FACTUAL ALLEGATIONS**

16           11.    At all pertinent times hereto, Defendant was hired to collect a  
17 consumer debt and attempted to collect that debt from Plaintiff.  
18

19           12.    The debt at issue arose from consumer transactions in connection  
20 with an alleged personal auto loan debt.

21           13.    Plaintiff never incurred any debt in connection with a business or  
22 commercial activities, and therefore, the debt could only have arisen from  
23 financial obligation for primarily personal, family or household purposes.  
24

25           14.    Beginning in or around July 2015 Defendant called Plaintiff on his  
26

1 cellular telephone seeking and demanding payment on the alleged debt.

2 15. Defendant's collectors called Plaintiff from telephone numbers  
3 including, but not limited to, (619) 610-1627. The undersigned has confirmed that  
4 this number belongs to Defendant.  
5

6 16. Plaintiff told Defendant when the calls commenced to stop calling his  
7 cell phone, and that he disputed the debt.  
8

9 17. Despite Plaintiff's requests, Defendant's calls have persisted.

10 18. Defendant has continued to place calls at times that were not  
11 convenient, including during work hours, and before 8:00am.

12 19. Once Defendant was aware that Plaintiff disputed the debt, and that  
13 he did not wish to be called, there was no reason for any additional calls, other  
14 than for the purposes of harassment  
15

16 20. Defendant's representatives have threatened to garnish Plaintiff's  
17 wages, and report this disputed debt to the credit reporting agencies.  
18

19 21. However, neither legal action of any kind has been taken by  
20 Defendant against the Plaintiff, nor has there been any reporting by Defendant to  
21 the credit bureaus.

22 22. Upon information and belief, it is averred that Defendant never  
23 intended to garnish his wages or report the debt to the credit reporting agencies,  
24 but the threats were made in an attempt to coerce payment from Plaintiff.  
25  
26



1 consumer's location.

2 28. Defendant violated § 1692c(a)(1) by calling Plaintiff before 8:00am  
3 and during his work hours.  
4

5 **COUNT II**  
6 **DEFENDANT VIOLATED § 1692d OF THE FDCPA**

7 29. A debt collector violates § 1692d by engaging in any conduct the  
8 natural consequence of which is to harass, oppress, or abuse any person in  
9 connection with the collection of a debt.  
10

11 30. Defendant violated § 1692d of the FDCPA when it placed repeated  
12 harassing telephone calls to Plaintiff's cellular telephone; when it continued to call  
13 Plaintiff after being advised that the debt was disputed; and when it continued to  
14 call Plaintiff after it was aware that Plaintiff did not wish to be contacted.  
15  
16

17 **COUNT III**  
18 **DEFENDANT VIOLATED § 1692d(5) OF THE FDCPA**

19 31. A debt collector violates § 1692d(5) by causing a telephone to ring or  
20 engaging any person in telephone conversation repeatedly or continuously with  
21 intent to annoy, abuse, or harass any person at the called number.  
22

23 32. Defendant violated § 1692d(5) when it placed repeated and  
24 continuous harassing telephone calls to Plaintiff's cellular telephone causing it to  
25 ring continuously with the intent to annoy, abuse, or harass Plaintiff.  
26

**COUNT IV**  
**DEFENDANT VIOLATED §§ 1692e AND 1692e(4) OF THE FDCPA**

33. A debt collector violates section 1692e of the FDCPA by using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

34. A debt collector violates section 1692e(4) of the FDCPA by representing or implying that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

35. A debt collector violates section 1692e(5) of the FDCPA by threatening to take any action that cannot legally be taken or that is not intended to be taken.

36. A debt collector violates section 1692e(10) of the FDCPA by using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

37. A debt collector violates sections 1692e, 1692e(4), 1692e(5) and 1692e(10) of the FDCPA when it falsely threatened to garnish his wages and to report the debt to the credit bureaus without the intent to take such action.

**COUNT V**  
**DEFENDANT VIOLATED §§ 1692g OF THE FDCPA**

38. A debt collector violates § 1692g(a) of the FDCPA by failing to send to the consumer, within five days after its initial communication with a consumer in connection with the collection of a debt, a written notice containing: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the collector; and (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

39. Defendant violated § 1692g(a) when it failed to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of his rights to dispute the debt or request verification of the debt or providing him with the name of the original creditor and the amount of the debt.



**COUNT VI**  
**DEFENDANT VIOLATED THE RFDCPA**

40. A debt collector violates section 1788.17 of the California Civil Code by failing to comply with sections 1692b through 1692j of the FDCPA.

41. Defendant violated section 1788.17 of the California Civil Code when it violated the FDCPA for the reasons set forth in this Complaint.

WHEREFORE, Plaintiff, GEORGE PADILLA, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
- d. All actual damages, statutory damages, reasonable attorney's fees and costs, and any other litigation costs incurred by Plaintiff pursuant to the RFDCPA at Cal. Civ. Code § 1788.17; and
- e. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, GEORGE PADILLA, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C..

DATED: 8-18-16

By: /s/ Amy L. Bennecoff Ginsburg  
Amy L. Bennecoff Ginsburg (275805)  
Kimmel & Silverman, P.C  
30 East Butler Pike  
Ambler, PA 19002  
Telephone: (215) 540-8888  
Facsimile (215) 540-8817  
Email: aginsburg@creditlaw.com  
Attorney for Plaintiff